

SMALL CONSTRUCTION WORKS CONTRACT

Suitable for any type of 'smaller scale' residential building work under a lump sum contract price, where that price is at least \$12,000 and up to approximately \$60,000, as covered under the *Home Building Act 1989 (NSW)*

Owner Name: _____

Site Address: _____

Date: _____

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Checklist for Owners entering into building contracts

CHECKLIST

- | | | | |
|----|--|------------------------------|-----------------------------|
| 1 | Does the contractor hold a current contractor licence? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 2 | Does the licence cover the type of work included in the contract? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 3 | Is the name and number on the contractor's licence the same as on the contract? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 4 | Is the work to be undertaken covered in the contract, drawings or specification? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 5 | Does the contract clearly state a contract price or contain a warning that the contract price is not known? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 6 | If the contract price may be varied, is there a warning and an explanation about how it may be varied? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 7 | Are you aware of the cooling off provisions relating to the contract? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 8 | Is the deposit within the legal limit? The limit is 10% for work costing \$20,000 or less or 5% for work costing more than \$20,000. | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 9 | Is the procedure for variations understood? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 10 | Are you aware of who is to obtain any council or other approval for work? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 11 | Do you understand that the contractor must have a policy of home warranty insurance under the <i>Home Building Act 1989</i> and provide you with a certificate of insurance before receiving any money under the contract (including a deposit) or before doing any work for more than \$12,000? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 12 | Has the contractor given you a document that explains the operation of the <i>Home Building Act 1989</i> and the procedures for the resolution of contract and Insurance disputes? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |

SIGNATURES

Do not sign this contract unless you have read and understand the clauses as well as the notes and explanations contained in this document.

If you have answered "no" to any question in the checklist, you may not be ready to sign the contract.

Both the contractor and the owner should retain an identical signed copy of this contract including drawings, specifications and other attached documents. Make sure that you initial all attached documents and any attachments or deletions to the contract.

SIGNED COPY OF THE CONTRACT

Under the *Home Building Act* a signed copy of the contract must be given to the owner within 5 working days after the contract is entered into.

HOME WARRANTY INSURANCE

The contractor must provide the owner with a certificate of home warranty insurance (for work over \$12,000) before commencement of work and before demanding or receiving payment.

OWNER'S ACKNOWLEDGEMENT

I/We have been given a copy of the Consumer Information Brochure and I/We have read and understand it.

I/We have completed the check list and answered "Yes" to all items on it.

Note: Where the owner is a company or partnership or the contract is to be signed by an authorised agent of the owner, the capacity of the person signing the contract, eg director, must be inserted

Signature _____

Signature _____

Name [print] _____

Name [print] _____

Capacity [print] _____

Capacity [print] _____

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OWNER

CONTRACTOR

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Schedule 1 – Contract Details

ITEM

1. Owner(s)
Name: _____
Address: _____
Phone (H): _____ (W): _____
Fax: _____ Mobile: _____
Email: _____ A.B.N: _____

2. Contractor(s)
Name: _____
Address: _____
Phone (H): _____ (W): _____
Fax: _____ Mobile: _____
Email: _____ A.B.N: _____
Contractor's Licence No. _____

3. Contract Price
Price excluding GST: \$ _____
GST on the above amount: \$ _____
The contract price is _____ (in words)
\$ _____ (the contract price is GST inclusive)

WARNING: The contract price may vary under this contract due to:



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4. The Site

The site is land at: Lot _____ DP No. _____

Certificate of Title: _____

Street Address: _____

5. Commencement Date

The commencement date is _____, subject to clause 4.

6. Building Period

The building works must reach the stage of practical completion no more than _____ days / weeks (delete which ever is not applicable) after the commencement date, and can be extended under Clause 5.

ACCEPTANCE OF CONTRACT

1. This contract is made between the owner and the contractor.
2. The Schedules form part of this contract.
3. The Checklist does not form part of this contract.
4. The owner acknowledges that it has received the Checklist and the Consumer Building Guide before signing this contract.
5. The owner has read and understood this contract.

Owner(s) Signature: _____

Contractor's Signature: _____

Date: _____

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Schedule 2 – Progress Payments

	STAGE	PERCENTAGE	AMOUNT
1	DEPOSIT	_____ %	\$ _____
2		_____ %	\$ _____
3		_____ %	\$ _____
4	PRACTICAL COMPLETION	_____ %	\$ _____

By law, the deposit must not be:

- (a) more than 5% if the contract price is more than \$20,000; or
- (b) more than 10% if the contract price is \$20,000 or less.

If the contract price is more than \$12,000, the contractor must not carry out any of the building works, or demand or receive any part of the contract price (including a deposit) until warranty insurance is in force, and the owner is provided with the certificate of insurance.

The building works (describe here):

The building works are described in detail in the plans and specifications.

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Schedule 3 – Allowances for Prime Cost and Provisional Sum Items

Table A	Description of Each Prime Cost Item	Contractor's Allowance	Quantity	Prime Cost Allowances
1				
2				
3				
4				
5				
6				
7				

Table B	Description of Each Provisional Sum Item	Estimated quantity of components or materials	Contractor's allowance (including labour)	Total Provisional Sum Allowance for Labour and Materials
1				
2				
3				
4				
5				
6				
7				

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Schedule 4 – Warranty Insurance

[Only applicable where the contract price exceeds \$12,000]

Note: If the contract price exceeds \$12,000, the contractor must not carry out any of the building works, or demand or receive any part of the contract price (including a deposit) until warranty insurance is in force, and the owner is provided with the certificate of insurance.

Insurer Name: _____

Insurer Address: _____

Phone: _____ Fax: _____

Name of insured (owner): _____

Premium payable: _____

ATTACH CERTIFICATE HERE

STATEMENT SETTING OUT THE OWNER'S RIGHT TO TERMINATE THIS CONTRACT UNDER SECTION 7BA OF THE HOME BUILDING ACT

This contract may be subject to a cooling-off period that entitles the owner to rescind this contract by giving a notice in writing as required by Section 7BA of the Home Building Act 1989:

- (a) If the owner has been given a copy of the signed contract – at any time before the expiration of 5 clear business days after the owner is given a copy of the signed contract; or
- (b) If the owner has not been given a copy of the signed contract within 5 days after the contract has been signed – at any time before the expiration of 5 clear business days after the owner becomes aware that the owner is entitled to be given a copy of the signed contract.

If the owner terminates this contract under Section 7BA of the Home Building Act 1989, the contractor is entitled to a reasonable price for the work carried out under the contract up to the date this contract is rescinded.

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CONTRACT TERMS

1. PRIMARY OBLIGATIONS

The contractor will carry out and complete the building works in accordance with this contract.

The owner must pay the contractor:

- (a) the contact price in accordance with the progress payments schedule at schedule 2;
- (b) any other amount which is payable under this contract, on demand after the contractor has carried out the work or incurred the cost.

2. OWNER'S JOINT AND SEVERAL LIABILITY

If there is more than one owner:

- (a) the obligations in this contract apply [REDACTED];
- (b) a quote, notice, claim or any other communication to the owners is only [REDACTED];
- (c) only [REDACTED] is required to sign a document (including a quote, notice, instruction, direction or other communication) or to give an instruction, direction or other communication, to legally bind [REDACTED].

3. ACCESS TO THE SITE

For the purposes of having the building works carried out, the owner must give the contractor [REDACTED].

The owner must give the contractor and the contractor's workers and subcontractors adequate access to any available [REDACTED].

The contractor shall give possession of the site to the owner when all money payable by the owner to the contractor under this contract has been paid.

4. COMMENCEMENT

Before the contractor is obliged to commence the building works, the owner must give the contractor written evidence:

- (a) that the owner holds the legal title to or is otherwise entitled to have the building works carried out on the site;

- (b) of any easements, covenants and / or encumbrances that may affect the building works on the site;
- (c) of the owner's ability to pay the contract price; and
- (d) of all necessary building and planning approvals having been received.

If the owner does not do so after being requested by the contractor, the contractor may:

- a) [REDACTED];
- or
- b) if it has been at least [REDACTED] days since the request, [REDACTED].

The contractor must ensure the building works commence as soon as it is reasonably possible.

The building period commences on the date the contractor commences the works.

5. DELAYS

The contractor shall be entitled to a reasonable extension of the building period if the building works are delayed from a cause, thing or matter beyond the sole control of the contractor, including (but not limited to) any failure by the owner to:

- (a) make a selection; or
- (b) give the contractor sufficient access to the site to carry out the building works.

The building period will be reasonably extended if the contractor notifies the owner in writing of an entitlement to an extension of time.

6. VARATIONS

If the owner requests a variation, the contractor may give the owner a written quote detailing the work.

If the owner agrees to the variation by signing the quote and returning it to the contractor within [REDACTED] days, the contractor will then do the variation in the time agreed.

7. PRIME COST AND PROVISIONAL SUM ITEMS

When required by the contractor, the owner must promptly select all items that relate to a prime cost or provisional sum item.

Each prime cost or provisional sum item must be listed in schedule 3, and have an allowance stated next to it, specifying the estimated price of supplying the item or providing the work. Where the actual price of supplying the item or providing the work is

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more than the allowance, the difference plus the margin specified in schedule 3 applied to that difference is added to the contact price, and is payable by the owner.

8. SURPLUS MATERIALS

Unless otherwise stated in this contract, any demolished and / or surplus materials will [REDACTED].

9. LATENT SITE CONDITIONS

The contractor shall not be responsible for any latent site conditions, which are only revealed after [REDACTED],

and which are likely to adversely affect the carrying out of the building works.

The contractor may carry out any additional work that is required, if the contractor considers it necessary for satisfactory completion of the building works.

Any additional work necessary, due to latent site conditions or unforeseen circumstances, is deemed to be a variation, and the owner must promptly sign a written variation when provided by the contractor. If a price is not agreed, the owner will be charged the actual cost to carry out the additional work, plus another [REDACTED]%. [REDACTED]

10. RETENTION OF TITLE

The legal title in all building materials does not [REDACTED].

If the owner fails to make a due payment, the contractor may [REDACTED]. [REDACTED]

11. WORK DONE BY OWNER

The owner must ensure that the condition of the site is suitable for the building works to commence or continue when required by the contractor.

If the owner fails to do so, any additional work required to be carried out in order for the building works to commence or continue is deemed to be a variation, and the owner must promptly sign a written variation when provided by the contractor. If a price is not agreed, the owner will be charged the actual cost to carry out the additional work, plus another [REDACTED]%. [REDACTED]

12. PRACTICAL COMPLETION

The contractor must:

- (a) reach practical completion by the end of the building period (as extended); and
- (b) give the owner a written notice of practical completion.

The notice of practical completion is to state the contractor's assessment of the date of practical completion, and set out the contractor's final progress claim. On practical completion, the owner must:

- (a) inspect the building works with the contractor; and
- (b) if applicable, give the contractor a written, signed list of any defective or unfinished building work.

The owner must immediately pay the amount of the final progress claim upon practical completion.

13. CONTRACTOR'S RIGHT TO FIX

If the owner claims the building works are defective at any time, the owner must [REDACTED]. [REDACTED]

14. SUSPENSION

If the owner is in breach of this contract in any way whatsoever, the contractor may suspend the carrying out of the building works.

The contractor must recommence the carrying out of the building works within a reasonable time after the owner [REDACTED]. [REDACTED]

15. TERMINATION

If either party is in serious breach of this contract, the party not in breach may give the other party a written request to remedy that breach.

If the breach is not remedied within 5 days, the party not in breach may terminate this contract by giving written notice to that effect.

16. INSOLVENCY

Should a party become insolvent, then the other party may, by giving a written notice, terminate this contract. To be insolvent means:

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- (a) any act of bankruptcy under the Bankruptcy Act by a natural person;
- (b) the appointment of a liquidator, provisional liquidator, receiver, receiver and manager, administrator or the entering into of a deed of arrangement if a corporation; or
- (c) any act of insolvency.

17. RISK

All materials shall be at the owner's risk once delivered to the site.

18. INSURANCE

The contractor is to have public liability insurance of at least \$5,000,000, and the owner must ensure that the owner has in place similar and adequate insurance. If the owner requires the contractor to also insure the works against loss or damage, or to similarly insure the owner's property while the building works are being carried out, the owner will be charged the contractor's actual cost of taking out such insurances, plus another 20% for arranging this insurance.

19. CHARGE OVER LAND

The owner charges the [REDACTED] with due payment to the contractor of all moneys that are or may become payable under this contract to the extent that a court of tribunal has made an order that the owner pays that amount to the contractor.

20. COPYRIGHT

The contractor owns the copyright in all plans, specifications and workshop drawings created by or on behalf of the contractor. If the owner provides the contractor with any sketch, plan or other documents which infringes upon another person's copyright or moral right, the owner will indemnify the contractor, and keep the contractor indemnified, against all claims and costs.

21. DEFAULT INTEREST

If the owner fails to make any payment on time under this contract, the contractor may charge the owner interest on the unpaid amount at an annual rate of up to [REDACTED] %.

22. DEBT COLLECTING COST

The owner must pay to the contractor any debt collection costs, including any legal fees and costs associated with recovering or attempted recovery of any amount under this contract.

23. PREVAILING DOCUMENTS

These general terms (including the schedules), the plans, and the specifications, have precedence in that order, if there is any inconsistency between them.

24. WHOLE AGREEMENT

These general terms, the schedules and the plans and specifications, comprise of the entire agreement between the parties, and supersedes any prior negotiations, discussions or understandings.

25. SUBCONTRACTING

The contractor may sub-contract any part of the building works.

26. GST

Where a price is not agreed for any additional charges or omissions from the building works, the amount of Goods and Service Tax attributable to the value for that supply is to be added to the price calculated under the terms of this contract.

27. STATUTORY WARRANTIES

To the extent required by the Home Building Act, the contractor warrants that:

- (a) the works will be performed in a proper and workmanlike manner and in accordance with specifications attached to this contract.
- (b) all materials supplied by the contractor will be good and suitable for the purpose for which they are used and that, unless otherwise stated in this contract, those materials will be new;
- (c) the works will be done in accordance with, and will comply with, the Home Building Act or any other law.
- (d) the works will be done with due diligence and within the time stipulated in this contract, or if no time is stipulated, within reasonable time;
- (e) if the works consists of the construction of a dwelling, the making of alternations or additions to a dwelling or the repairing, renovation,

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- decoration or protective treatment of a dwelling, the works will result, to the extent of the works conducted, in a dwelling that is reasonably fit for occupation as a dwelling; and
- (e) the works and any materials used in doing the works will be reasonably fit for the specified purpose or result, if the owner expressly makes known to the contractor, or other person with express or apparent authority to enter into a vary contractual arrangements on behalf of the contractor, the particular purpose for which the works are required or the result that the owner desires to be achieved so as to show that the owner relies on the contractor's skill and judgment.

28. MANDATORY CONDITIONS

To the extent required by the Home Building Act and subject to this clause, the works will comply with:

- (a) the Building Code of Australia (to the extent required under the Environment Planning and Assessment Act 1979, including any regulation or other instrument made under that Act);
- (b) all other relevant codes, standards and specifications that the works are required to comply with under any law; and
- (c) the conditions of any relevant development consent or complying development certificate.

The contractor is not liable if the works do not comply with the above requirements if the failure relates solely to:

- (a) a design or specification prepared by or on behalf of the owner (but not by or on behalf of the contractor); or
- (b) a design or specification required by the owner, if the contractor has

advised the owner in writing that the design or specification contravenes the above requirements.

To the extent required by the Home Building Act:

- (a) all plans and specifications for the works including any variations to those plans and specifications form part of this contract;
- (b) any agreement to vary this contract, or to vary the plans and specifications for the works, must be in writing and signed the parties.

29. DEFINITIONS

In this contract:

"building period" means the number of days or weeks stated in item 6 of schedule 1, and as extended under clause 5;

"building works" means the works described in schedule 2 including any variations;

"contract price" means the amount stated in item 3 of schedule 1;

"contractor" means the contractor named in item 2 of schedule 1;

"commencement date" means the date stated in item 5 of schedule 1;

"days" means calendar days;

"owner" means the owner named in item 1 of schedule 1;

"practical completion" means when the building works are complete, except for minor omissions and defects that do not prevent the building works from being reasonably capable of being used for their usual purpose;

"site" means that part of the land described in item 4 of schedule 1 where the works are to be carried out;

"variation" means any change in the works or the method of carrying out the works; and

and like words have the same meaning.